

SECOND REGULAR SESSION

SENATE BILL NO. 1248

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATORS CROWELL, BARTLE AND ALTER.

Read 1st time March 1, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

5484S.02I

AN ACT

To repeal sections 188.015, 188.020, 188.025, 188.027, 188.028, 188.029, 188.030, 188.031, 188.036, 188.039, 188.043, 188.047, 188.052, 188.055, 188.060, 188.070, 188.075, 188.080, 188.230, and 188.250, RSMo, and to enact in lieu thereof three new sections relating to abortion, with penalty provisions and a referendum clause.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 188.015, 188.020, 188.025, 188.027, 188.028, 188.029,
2 188.030, 188.031, 188.036, 188.039, 188.043, 188.047, 188.052, 188.055, 188.060,
3 188.070, 188.075, 188.080, 188.230, and 188.250, RSMo, are repealed and three
4 new sections enacted in lieu thereof, to be known as sections 188.015, 188.020,
5 and 188.022, to read as follows:

188.015. Unless the language or context clearly indicates a different
2 meaning is intended, the following words or phrases for the purposes of sections
3 188.010 to 188.130 shall be given the meaning ascribed to them:

4 (1) "Abortion", the intentional destruction of the life of an embryo or fetus
5 in his or her mother's womb or the intentional termination of the pregnancy of a
6 mother with an intention other than to increase the probability of a live birth or
7 to remove a dead or dying unborn child;

8 (2) "Abortion facility", a clinic, physician's office, or any other place or
9 facility in which abortions are performed other than a hospital;

10 (3) "Conception", the fertilization of the ovum of a female by a sperm of
11 a male;

12 (4) "**Fertilization**", **that point in time when a male human sperm**
13 **penetrates the zona pellucida of a female human ovum;**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

14 (5) "Gestational age", length of pregnancy as measured from the first day
15 of the woman's last menstrual period;

16 [(5)] (6) "Physician", any person licensed to practice medicine in this
17 state by the state board of registration of the healing arts;

18 (7) "**Pregnant**", **the human female reproductive condition of**
19 **having a live unborn human being within her body throughout the**
20 **entire embryonic and fetal ages of the unborn child from fertilization**
21 **to full gestation and child birth;**

22 [(6)] (8) "Unborn child", the offspring of human beings from the moment
23 of conception until birth and at every stage of its biological development,
24 including the human conceptus, zygote, morula, blastocyst, embryo, and fetus;

25 [(7)] (9) "Viability", that stage of fetal development when the life of the
26 unborn child may be continued indefinitely outside the womb by natural or
27 artificial life-supportive systems.

188.020. 1. No person shall [perform or induce an abortion except a
2 physician] **knowingly administer to, prescribe for, procure for, or sell to**
3 **any pregnant women any medicine, drug, or other substance with the**
4 **specific intent of causing or abetting the termination of the life of an**
5 **unborn child. No person shall knowingly use or employ any instrument**
6 **or procedure upon a pregnant woman with the specific intent of**
7 **causing or abetting the termination of the life of an unborn child. Any**
8 **violation of this section is a class B felony.**

9 2. **Nothing in this section shall be construed to prohibit the sale,**
10 **use, prescription, or administration of a contraceptive measure, drug,**
11 **or chemical if it is administered prior to the time when a pregnancy**
12 **could be determined through conventional medical testing and if the**
13 **contraceptive measure is sold, used, prescribed, or administered in**
14 **accordance with manufacturer instructions.**

188.022. 1. **No licensed physician who performs a medical**
2 **procedure designed or intended to prevent the death of a pregnant**
3 **mother is guilty of violating section 188.020. However, the physician**
4 **shall make reasonable medical efforts under the circumstances to**
5 **preserve both the life of the mother and the life of her unborn child in**
6 **a manner consistent with conventional medical practice.**

7 2. **Medical treatment provided to the mother by a licensed**
8 **physician which results in the accidental or unintentional injury or**

9 **death to the unborn child is not a violation of this section.**

10 **3. Nothing in section 188.020 and this section shall be construed**
11 **to subject the pregnant mother upon whom any abortion is performed**
12 **or attempted to any criminal conviction and penalty.**

[188.025. Every abortion performed at sixteen weeks
2 gestational age or later shall be performed in a hospital.]

[188.027. No abortion shall be performed except with the
2 prior, informed and written consent freely given of the pregnant
3 woman.]

[188.028. 1. No person shall knowingly perform an abortion
2 upon a pregnant woman under the age of eighteen years unless:

3 (1) The attending physician has secured the informed
4 written consent of the minor and one parent or guardian; or

5 (2) The minor is emancipated and the attending physician
6 has received the informed written consent of the minor; or

7 (3) The minor has been granted the right to self-consent to
8 the abortion by court order pursuant to subsection 2 of this section,
9 and the attending physician has received the informed written
10 consent of the minor; or

11 (4) The minor has been granted consent to the abortion by
12 court order, and the court has given its informed written consent
13 in accordance with subsection 2 of this section, and the minor is
14 having the abortion willingly, in compliance with subsection 3 of
15 this section.

16 2. The right of a minor to self-consent to an abortion under
17 subdivision (3) of subsection 1 of this section or court consent under
18 subdivision (4) of subsection 1 of this section may be granted by a
19 court pursuant to the following procedures:

20 (1) The minor or next friend shall make an application to
21 the juvenile court which shall assist the minor or next friend in
22 preparing the petition and notices required pursuant to this
23 section. The minor or the next friend of the minor shall thereafter
24 file a petition setting forth the initials of the minor; the age of the
25 minor; the names and addresses of each parent, guardian, or, if the
26 minor's parents are deceased and no guardian has been appointed,
27 any other person standing in loco parentis of the minor; that the

28 minor has been fully informed of the risks and consequences of the
29 abortion; that the minor is of sound mind and has sufficient
30 intellectual capacity to consent to the abortion; that, if the court
31 does not grant the minor majority rights for the purpose of consent
32 to the abortion, the court should find that the abortion is in the
33 best interest of the minor and give judicial consent to the abortion;
34 that the court should appoint a guardian ad litem of the child; and
35 if the minor does not have private counsel, that the court should
36 appoint counsel. The petition shall be signed by the minor or the
37 next friend;

38 (2) A hearing on the merits of the petition, to be held on the
39 record, shall be held as soon as possible within five days of the
40 filing of the petition. If any party is unable to afford counsel, the
41 court shall appoint counsel at least twenty-four hours before the
42 time of the hearing. At the hearing, the court shall hear evidence
43 relating to the emotional development, maturity, intellect and
44 understanding of the minor; the nature, possible consequences, and
45 alternatives to the abortion; and any other evidence that the court
46 may find useful in determining whether the minor should be
47 granted majority rights for the purpose of consenting to the
48 abortion or whether the abortion is in the best interests of the
49 minor;

50 (3) In the decree, the court shall for good cause:

51 (a) Grant the petition for majority rights for the purpose of
52 consenting to the abortion; or

53 (b) Find the abortion to be in the best interests of the minor
54 and give judicial consent to the abortion, setting forth the grounds
55 for so finding; or

56 (c) Deny the petition, setting forth the grounds on which
57 the petition is denied;

58 (4) If the petition is allowed, the informed consent of the
59 minor, pursuant to a court grant of majority rights, or the judicial
60 consent, shall bar an action by the parents or guardian of the
61 minor on the grounds of battery of the minor by those performing
62 the abortion. The immunity granted shall only extend to the
63 performance of the abortion in accordance herewith and any

64 necessary accompanying services which are performed in a
65 competent manner. The costs of the action shall be borne by the
66 parties;

67 (5) An appeal from an order issued under the provisions of
68 this section may be taken to the court of appeals of this state by
69 the minor or by a parent or guardian of the minor. The notice of
70 intent to appeal shall be given within twenty-four hours from the
71 date of issuance of the order. The record on appeal shall be
72 completed and the appeal shall be perfected within five days from
73 the filing of notice to appeal. Because time may be of the essence
74 regarding the performance of the abortion, the supreme court of
75 this state shall, by court rule, provide for expedited appellate
76 review of cases appealed under this section.

77 3. If a minor desires an abortion, then she shall be orally
78 informed of and, if possible, sign the written consent required by
79 section 188.039 in the same manner as an adult person. No
80 abortion shall be performed on any minor against her will, except
81 that an abortion may be performed against the will of a minor
82 pursuant to a court order described in subdivision (4) of subsection
83 1 of this section that the abortion is necessary to preserve the life
84 of the minor.]

[188.029. Before a physician performs an abortion on a
2 woman he has reason to believe is carrying an unborn child of
3 twenty or more weeks gestational age, the physician shall first
4 determine if the unborn child is viable by using and exercising that
5 degree of care, skill, and proficiency commonly exercised by the
6 ordinarily skillful, careful, and prudent physician engaged in
7 similar practice under the same or similar conditions. In making
8 this determination of viability, the physician shall perform or cause
9 to be performed such medical examinations and tests as are
10 necessary to make a finding of the gestational age, weight, and
11 lung maturity of the unborn child and shall enter such findings and
12 determination of viability in the medical record of the mother.]

[188.030. 1. No abortion of a viable unborn child shall be
2 performed unless necessary to preserve the life or health of the
3 woman. Before a physician may perform an abortion upon a

4 pregnant woman after such time as her unborn child has become
5 viable, such physician shall first certify in writing that the abortion
6 is necessary to preserve the life or health of the woman and shall
7 further certify in writing the medical indications for such abortion
8 and the probable health consequences.

9 2. Any physician who performs an abortion upon a woman
10 carrying a viable unborn child shall utilize the available method or
11 technique of abortion most likely to preserve the life and health of
12 the unborn child. In cases where the method or technique of
13 abortion which would most likely preserve the life and health of the
14 unborn child would present a greater risk to the life and health of
15 the woman than another available method or technique, the
16 physician may utilize such other method or technique. In all cases
17 where the physician performs an abortion upon a viable unborn
18 child, the physician shall certify in writing the available method or
19 techniques considered and the reasons for choosing the method or
20 technique employed.

21 3. An abortion of a viable unborn child shall be performed
22 or induced only when there is in attendance a physician other than
23 the physician performing or inducing the abortion who shall take
24 control of and provide immediate medical care for a child born as
25 a result of the abortion. During the performance of the abortion,
26 the physician performing it, and subsequent to the abortion, the
27 physician required by this section to be in attendance, shall take
28 all reasonable steps in keeping with good medical practice,
29 consistent with the procedure used, to preserve the life and health
30 of the viable unborn child; provided that it does not pose an
31 increased risk to the life or health of the woman.]

[188.031. For purposes of section 188.028, the term "next
2 friend" shall not include another minor child, or any entity or
3 person in an individual or representative capacity that has a
4 financial interest or potential gain from the proposed abortion, or
5 any employee of or volunteer for such entity or person.]

[188.036. 1. No physician shall perform an abortion on a
2 woman if the physician knows that the woman conceived the
3 unborn child for the purpose of providing fetal organs or tissue for

4 medical transplantation to herself or another, and the physician
5 knows that the woman intends to procure the abortion to utilize
6 those organs or tissue for such use for herself or another.

7 2. No person shall utilize the fetal organs or tissue
8 resulting from an abortion for medical transplantation, if the
9 person knows that the abortion was procured for the purpose of
10 utilizing those organs or tissue for such use.

11 3. No person shall offer any inducement, monetary or
12 otherwise, to a woman or a prospective father of an unborn child
13 for the purpose of conceiving an unborn child for the medical,
14 scientific, experimental or therapeutic use of the fetal organs or
15 tissue.

16 4. No person shall offer any inducement, monetary or
17 otherwise, to the mother or father of an unborn child for the
18 purpose of procuring an abortion for the medical, scientific,
19 experimental or therapeutic use of the fetal organs or tissue.

20 5. No person shall knowingly offer or receive any valuable
21 consideration for the fetal organs or tissue resulting from an
22 abortion, provided that nothing in this subsection shall prohibit
23 payment for burial or other final disposition of the fetal remains,
24 or payment for a pathological examination, autopsy or postmortem
25 examination of the fetal remains.

26 6. If any provision in this section or the application thereof
27 to any person, circumstance or period of gestation is held invalid,
28 such invalidity shall not affect the provisions or applications which
29 can be given effect without the invalid provision or application, and
30 to this end the provisions of this section are declared severable.]

1 [188.039. 1. For purposes of this section, "medical
2 emergency" means a condition which, on the basis of the
3 physician's good faith clinical judgment, so complicates the medical
4 condition of a pregnant woman as to necessitate the immediate
5 abortion of her pregnancy to avert her death or for which a delay
6 will create a serious risk of substantial and irreversible
7 impairment of a major bodily function.

8 2. Except in the case of medical emergency, no person shall
9 perform or induce an abortion unless at least twenty-four hours

10 prior thereto a treating physician has conferred with the patient
11 and discussed with her the indicators and contraindicators, and
12 risk factors including any physical, psychological, or situational
13 factors for the proposed procedure and the use of medications,
14 including but not limited to mifepristone, in light of her medical
15 history and medical condition. For an abortion performed or an
16 abortion induced by a drug or drugs, such conference shall take
17 place at least twenty-four hours prior to the writing or
18 communication of the first prescription for such drug or drugs in
19 connection with inducing an abortion. Only one such conference
20 shall be required for each abortion.

21 3. The patient shall be evaluated by a treating physician
22 during the conference for indicators and contraindicators, risk
23 factors including any physical, psychological, or situational factors
24 which would predispose the patient to or increase the risk of
25 experiencing one or more adverse physical, emotional, or other
26 health reactions to the proposed procedure or drug or drugs in
27 either the short or long term as compared with women who do not
28 possess such risk factors.

29 4. At the end of the conference, and if the woman chooses
30 to proceed with the abortion, a treating physician shall sign and
31 shall cause the patient to sign a written statement that the woman
32 gave her informed consent freely and without coercion after the
33 physician had discussed with her the indicators and
34 contraindicators, and risk factors, including any physical,
35 psychological, or situational factors. All such executed statements
36 shall be maintained as part of the patient's medical file, subject to
37 the confidentiality laws and rules of this state.

38 5. The director of the department of health and senior
39 services shall disseminate a model form that physicians may use
40 as the written statement required by this section, but any lack or
41 unavailability of such a model form shall not affect the duties of
42 the physician set forth in subsections 2 to 4 of this section.]

2 [188.043. 1. No person shall perform or induce a surgical
3 or medical abortion unless such person has proof of medical
malpractice insurance with coverage amounts of at least five

4 hundred thousand dollars.

5 2. For the purpose of this section, "medical malpractice
6 insurance" means insurance coverage against the legal liability of
7 the insured and against loss, damage, or expense incident to a
8 claim arising out of the death or injury of any person as a result of
9 the negligence or malpractice in rendering professional service by
10 any health care provider.

11 3. No abortion facility or hospital shall employ or engage
12 the services of a person to perform one or more abortions if the
13 person does not have proof of medical malpractice insurance
14 pursuant to this section, except the abortion facility or hospital
15 may provide medical malpractice insurance for the services of
16 persons employed or engaged by such facility or hospital.

17 4. Notwithstanding the provisions of section 334.100, RSMo,
18 failure of a person to maintain the medical malpractice insurance
19 required by this section shall be an additional ground for
20 sanctioning of a person's license, certificate, or permit.]

[188.047. A representative sample of tissue removed at the
2 time of abortion shall be submitted to a board eligible or certified
3 pathologist, who shall file a copy of the tissue report with the state
4 department of health and senior services, and who shall provide a
5 copy of the report to the abortion facility or hospital in which the
6 abortion was performed or induced and the pathologist's report
7 shall be made a part of the patient's permanent record.]

[188.052. 1. An individual abortion report for each abortion
2 performed or induced upon a woman shall be completed by her
3 attending physician.

4 2. An individual complication report for any post-abortion
5 care performed upon a woman shall be completed by the physician
6 providing such post-abortion care. This report shall include:

7 (1) The date of the abortion;

8 (2) The name and address of the abortion facility or
9 hospital where the abortion was performed;

10 (3) The nature of the abortion complication diagnosed or
11 treated.

12 3. All abortion reports shall be signed by the attending

13 physician, and submitted to the state department of health and
14 senior services within forty-five days from the date of the
15 abortion. All complication reports shall be signed by the physician
16 providing the post-abortion care and submitted to the department
17 of health and senior services within forty-five days from the date
18 of the post-abortion care.

19 4. A copy of the abortion report shall be made a part of the
20 medical record of the patient of the facility or hospital in which the
21 abortion was performed.

22 5. The state department of health and senior services shall
23 be responsible for collecting all abortion reports and complication
24 reports and collating and evaluating all data gathered therefrom
25 and shall annually publish a statistical report based on such data
26 from abortions performed in the previous calendar year.]

[188.055. 1. Every abortion facility, hospital, and physician
2 shall be supplied with forms by the department of health and
3 senior services for use in regards to the consents and reports
4 required by sections 188.010 to 188.085. A purpose and function
5 of such consents and reports shall be the preservation of maternal
6 health and life by adding to the sum of medical knowledge through
7 the compilation of relevant maternal health and life data and to
8 monitor all abortions performed to assure that they are done only
9 under and in accordance with the provisions of the law.

10 2. All information obtained by physician, hospital, or
11 abortion facility from a patient for the purpose of preparing reports
12 to the department of health and senior services under sections
13 188.010 to 188.085 or reports received by the division of health
14 shall be confidential and shall be used only for statistical
15 purposes. Such records, however, may be inspected and health
16 data acquired by local, state, or national public health officers.]

[188.060. All medical records, reports, and other documents
2 required to be kept under sections 188.010 to 188.085 shall be
3 maintained in the permanent files of the abortion facility or
4 hospital in which the abortion was performed for a period of seven
5 years.]

[188.070. Any physician or other person who fails to

2 maintain the confidentiality of any records or reports required
3 under sections 188.010 to 188.085 is guilty of a misdemeanor and,
4 upon conviction, shall be punished as provided by law.]

[188.075. Any person who contrary to the provisions of
2 sections 188.010 to 188.085 knowingly performs or aids in the
3 performance of any abortion or knowingly fails to perform any
4 action required by sections 188.010 to 188.085 shall be guilty of a
5 class A misdemeanor and, upon conviction, shall be punished as
6 provided by law.]

[188.080. Any person who is not a physician who performs
2 or induces or attempts to perform or induce an abortion on another
3 is guilty of a class B felony, and, upon conviction, shall be punished
4 as provided by law. Any physician performing or inducing an
5 abortion who does not have clinical privileges at a hospital which
6 offers obstetrical or gynecological care located within thirty miles
7 of the location at which the abortion is performed or induced shall
8 be guilty of a class A misdemeanor, and, upon conviction shall be
9 punished as provided by law.]

[188.230. Nothing in this act is intended to authorize
2 anyone other than a physician to perform an abortion.]

[188.250. 1. No person shall intentionally cause, aid, or
2 assist a minor to obtain an abortion without the consent or
3 consents required by section 188.028.

4 2. A person who violates subsection 1 of this section shall
5 be civilly liable to the minor and to the person or persons required
6 to give the consent or consents under section 188.028. A court may
7 award damages to the person or persons adversely affected by a
8 violation of subsection 1 of this section, including compensation for
9 emotional injury without the need for personal presence at the act
10 or event, and the court may further award attorneys' fees, litigation
11 costs, and punitive damages. Any adult who engages in or consents
12 to another person engaging in a sex act with a minor in violation
13 of the provisions of chapter 566, 567, 568, or 573, RSMo, which
14 results in the minor's pregnancy shall not be awarded damages
15 under this section.

16 3. It shall not be a defense to a claim brought under this

17 section that the abortion was performed or induced pursuant to
18 consent to the abortion given in a manner that is otherwise lawful
19 in the state or place where the abortion was performed or induced.

20 4. An unemancipated minor does not have capacity to
21 consent to any action in violation of this section or section 188.028.

22 5. A court may enjoin conduct that would be in violation of
23 this section upon petition by the attorney general, a prosecuting or
24 circuit attorney, or any person adversely affected or who reasonably
25 may be adversely affected by such conduct, upon a showing that
26 such conduct:

- 27 (1) Is reasonably anticipated to occur in the future; or
28 (2) Has occurred in the past, whether with the same minor
29 or others, and that it is not unreasonable to expect that such
30 conduct will be repeated.]

Section B. This act is hereby submitted to the qualified voters of this state
2 for approval or rejection at an election which is hereby ordered and which shall
3 be held and conducted on Tuesday next following the first Monday in November,
4 2006, pursuant to the laws and constitutional provisions of this state for the
5 submission of referendum measures by the general assembly, and this act shall
6 become effective when approved by a majority of the votes cast thereon at such
7 election and not otherwise.

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